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# Humans: The Biggest Barrier to Realising Human Rights - A South African Perspective

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## Abstract

In demarcating the law, human rights, and human behaviour, the objective is to explore the tension between safeguarding human rights and promoting individual autonomy. While international human rights law signifies the potential of creating dignified life experiences, the behaviour of humans, and, specifically, of those in government incited my focus on the effect of human behaviour on the realization of human rights. By studying human rights through a philosophical lens, a (a) conceptual clarification of human rights is provided, (b) the most prominent human rights are identified, (c) general and specific justifications of human rights discussed, and (d) the normative implications of human right claims explored. Focus is placed on South Africa although the value and potential generalisation of the data for evaluating the effectiveness of human rights in achieving their social goal globally, are acknowledged. Reviewing literature, an overview is provided of the law and human rights; the different dimensions of human rights; and human behaviour. Persistent human rights violations, albeit legal protection, are delineated and the significant role played by human behaviour during such violations are highlighted. Given that human behaviour is influenced by various ethical, social, and legal principles, governments are urged to be mindful of the well-being of the humans they are ethically and legally obliged to serve.

**Keywords:** human rights, human rights law, human behaviour, law, natural law, ethics, morals and values, human dignity, respect, South Africa, philosophical views

## 1. Introduction

When Nelson Mandela became the President of South Africa in 1994, he identified one major challenge that lied ahead, namely, the establishment of a social order in which individual liberty truly entails the freedom of the individual. To meet this challenge, he advocated behaviour aimed at restoring the human dignity of each and every South African as guaranteed, alongside a wide variety of other individual fundamental rights, in the Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter the Constitution).

Mandela noted the importance of human rights as well as their practical realisation to give effect to such rights. Whether the formal acceptance of internationally recognised human rights in their constitutions and other national legislation by governments around the globe is a mere symbolic gesture or a true reflection of a commitment to and an internalisation of the demarcated norms associated with

human rights and is however yet to be established [1]. In this regard, the tension that arises between the protection of humans from being exploited and their fundamental rights violated, on the one side, and the promotion of individual autonomy and respect, on the other, needs consideration.

Given the significant role played by governments (consisting of humans) in determining the structures, formations, and circumstances under which effect can be given to human rights within their respective countries, this chapter explores the practices, norms, and values adhered to by humans and how they correspond or conflict with the goals of international human rights law through a philosophical lens. By describing and analysing both the legal and normative impact of human nature and behaviour, this chapter contributes to the understanding of contemporary sociolegal changes and its consequential implications on the effective realising of human rights. Consideration is taken of the practical reality mirroring the worldwide occurrence of daily human right infringements by humans through their behaviour, making it clear that neither the existence of natural laws nor the ratification of human right treaties is necessary congruent with their day-to-day governance of nations and that a gap exists between philosophical views pertaining to natural moral rights, idealistic legal documents guaranteeing human rights, and reality. In order to continue the philosophical debate regarding human rights, a conceptual clarification of what human rights entail is firstly provided.

## **2. What are human rights?**

Human rights are regarded by Heard [2] as being a product of a global philosophical debate that has prolonged for over 2000 years. As a result, human rights are viewed as a continuation of the natural rights tradition which focused on the moral properties of human beings and, thus, emerged long before the adoption thereof in legal documents [3]. They encompass moral entitlements that belong to humans whether recognised by legal systems or not [4]. As moral rights and claims, they present minimum standards pertaining to human treatment to which humans are morally entitled to [5] simply because of them being human [6]. In this regard, Nussbaum [7] identified the need for a list of minimal goods or opportunities required by all humans to live decent lives—an issue that soon became a central topic in the debate on the philosophical foundations of human rights. Gusman [3] agrees by stating that the question is not whether human rights have value but rather whether their special status as being essential to ensure humans a valuable life is recognised. Along the same trend, Grotius [8] viewed human rights as part of universal laws of nature not only guiding the interaction between humans but also allowing for individual (moral) rights to self-determination.

Various authors [9–12], however, argue that rights cannot exist without being provided legal status ensuring mechanism for their enforceability. In referring to the views of philosophers such as Burke, Bentham, and Rousseau, Heard [2] similarly argues that human rights do not automatically belong to all humans detached from human endeavour as they are, *par excellence*, created by human action. As such, human rights are the product of both human co-existence and legal systems. Although philosophers were initially reluctant to scrutinise human rights as embedded in international and national legal systems [13], Kirchschlaeger [14] identified four different dimensions to human rights aiming at guaranteeing the safeguarding of every human in respect of the crucial areas and elements of basic human existence (life and survival). These four dimensions are forthwith employed as a framework in obtaining a holistic and integrated view of human rights.

## **2.1 The ethical dimension of human rights**

Considering the philosophical emphasis on basic moral or natural rights as well as on the very nature of rights, the ethical dimension of human rights is firstly analysed. Although philosophers measured human behaviour during premodern times against the will of God (adherence to natural moral obligations), modern times necessitate the consideration of human behaviour as being morally good or bad by measuring its degree of adherence to legally sound human rights [15]. This is due to human rights becoming central to the ethical and political discourse, indicating a weighty shift regarding how humans understand the foundations of morality.

By itself, human rights incorporate norms that are perceived to allow humans to live civilised and honourable/dignified lives [6] or lives worth living as long as they know and recognise these rights and behave according [16]. It has, moreover, become crucial for humans to be aware of the fact that they are part of a dynamic world, co-existing amongst other humans. This entails the dichotomy of man—as an individual complete whole, humans strive at self-survival placing them in basic competition with one another on the one side, whilst they, as members of a social unit, on the other side, should be dedicated to group survival [17–19].

Since human rights derived from human nature, and humans are, by nature, egoistic in that they selfishly seek individual autonomy at the cost of others [19], legal systems aim at limiting and guiding human behaviour by combining human rights with corresponding duties [17]. This entails that the human rights of others need to be respected at all times even if it may be detrimental to individual needs [13]. Human rights, subsequently, do not only provide legitimate claims, they also oblige—by way of successive waves of responsibilities—all humans to respect them and to withhold themselves from infringing upon the human rights equally conferred to others as well as to, for unselfish reasons [20, 21], protect and support those whose rights are abused or denied. With regard to the latter, Keith [1] and Kirchsclaeger [14] draw specific attention to vulnerable, marginalised human beings and those belonging to discriminated against minority groups having to endure the violation of their human rights because they simply do not possess sufficient knowledge or means to claim their rights and, thus, cannot make their voices heard. It is in this regard that Changeux [22] proposed that humans need to discern and explain the different aspirations and beliefs of human beings regarding their own mental health and life expectations to each other through extensive dialogue in order to ensure the good life all desire and to achieve a more harmonious balance between the rights of the individual and the needs of human society.

The international legal recognition of human rights aiming at giving effect to human rights is regarded as one of the greatest moral achievements of humankind [23]. This is due to the perception that an ethical system functions as a framework for the creation, manifestation, and enforcement of legal principles. In this regard, Kirchsclaeger [14] believes that a just law is a code made by humans to reflect their moral convictions, whilst unjust law comprises of codes that is not in harmony with moral laws. Since the practical realisation of human rights depends upon the conscious willingness of humans themselves to follow moral acceptable behaviour towards others [13], human rights will continue to have a strong moral foundation regardless of their legal status.

## **2.2 The legal dimension of human rights**

According to Habermas [24], the legal dimension of human rights has not solely developed in reaction to wars of aggression and mass crimes on humankind nor can its advances be limited to a human rights regime. He contends that globalisation was



the main reason behind this dimension as it highlighted the necessity to standardise moral human behaviour across national borders, thus requiring governance beyond the nation-state and the conversant legal principles that has, until now, been effective. As a direct consequence, the sovereignty of national governments (the subjects of international law) was affected, and their ability to control human behaviour was limited as they were left with less independent decision-making power regarding their traditional functions, ranging from protecting peace and physical security to warranting freedom, the rule of law, and democratic legitimation (creators of social security for its citizens). In this regard, the international human rights regime has adopted a more behavioural tone during the twenty-first century [25]. This is in line with the philosophical views of Burke, Bentham, and Rousseau [2], namely, that human rights are a product of a specific society and its prevailing legal system due to their interdependency on human behaviour rather than belonging to humans merely based on their humanness.

Because of its international legal recognition, human rights are defined by various authors [4, 25–27] as universal rights which emerged as an ideal from legal imperatives as reflected in various declarations, conventions, and treaties leading to a universal culture of human rights. International human rights law, although existing beyond the determination of specific societies [2], essentially serve as individual legal entitlements primarily against all States and State entities. Such entitlements allow humans to legitimately claim equal protection of their basic human needs, respect for their dignity, and the fulfilment of their ideal to live a life worth living [1, 6] regardless of where they live. This is in line with the philosophical views of Rousseau, claiming that people agree to live alongside others if society protects them and if human rights are used as an ethical yardstick to globally determine and criticise governments' treatment of their inhabitants [2].

Different authors [14, 23, 28, 29], to the contrary, believe that international human rights law is not universal in the sense that it cannot substitute national laws but only complement them. They believe that human rights are incompatible with their own universality as they simply apply within a specific geographical area once accepted by societies as part of their positive national legal doctrine. For human rights to have universal status, Gusman [3] contends that they must be justifiable from different moral cultures and acceptable by the majority, though not necessarily all, cultures around the globe.

In criticising the individualistic approach to universal human rights derived from Western cultures [6, 30], Mkabela [31] voices his concern over universal human rights negating the importance of a unique set of values guiding human behaviour in different communities. He opines that the significance of unique values lies in them serving as the foundation for developing practices, codes, and ethical as well as cultural standards and for directing attitudes regarding ethical behaviour amongst humans irrespective of class, ethnicity, or gender. To substantiate his argument, Mkabela [31] refers to ubuntu, a traditional value system pertinent to the African continent, incorporating moral values such as humility, modesty, conformity, and empathy forming the basis upon which individuals are viewed through a lens placing more emphasis on individual duties and responsibilities than on individual human rights.

Prominence is placed on moral values based on the mutual acceptance that the humanity of individuals is conveyed through personal interactions with others in a specific community. In view hereof, it is evident that human rights law needs the support of an equivalent moral awareness and ethos to be effective and regarded as being just. Humans do not follow legal principles purely because they fear its sanctions but rather because they believe in and share the ethical principles underscored by legal imperatives [14]. This is consistent with the nature of humans to constantly,

consciously, and unconsciously adapt their behaviour in order to regard themselves as being moral persons [32].

In considering the amount of prevalent human rights violations occurring worldwide despite the existence of moral and/or legal human rights, Wolfgang [30], to the contrary, casts doubt on the social validity of human rights to bring about mutual respect amongst humans. Posner [23], likewise, criticises human rights law as he could find little evidence of it improving the general well-being of humankind. In this regard, Ajey [6] notes that the values cherished in international human rights documents arise mainly from liberal conceptions of humans and society, which gave rise to the prioritisation of civil and political rights over socio-economic rights (the rights to work, health, or education) as well as the rights of community members, despite their developmental value for humankind. In agreement, Wolfgang [30] cautions against a too optimistic view steered by the conviction that globalisation, economic growth, and legal actions alone can foster human rights. Mention is, in this regard, made of the inherent weaknesses of international human rights law to respect traditional community practices as well as the diversity amongst nations, which he regard as being incompatible with the idea of universal human rights. This leads to necessity of also taking regard of the political element influencing human rights.

### **2.3 The political dimension of human rights**

The extent to which human rights are legally recognised within a society is directly influenced by the different political struggles societal members had to endure [2].

Experiences gained through a variety of political struggles occurring worldwide against human injustices, nevertheless, led to political deliberation, the formation of political grounded opinions and political theories, as well as the following of political processes to achieve mutually agreed upon resolutions that could enjoy global acceptance in order to prevent the reoccurrence of such injustices. This, in turn, allowed for moral human rights to be schematically transformed into legally protected human rights with the aim of ensuring their enforceability, warranting a more controlled and well-disciplined judging system as well as assuring the selection of the elements of human existence that essentially requires special protection [14].

Since the outcome of political decisions may, by itself, give rise to gross human rights infringements when extreme political action and military intervention are undertaken, justified by an attempt to bring an end to individual human rights violations [33], the law, in turn, places specific limitations on political State power [28]. By guaranteeing political rights as well as rights to development, social, economic, and cultural rights, the law moreover promotes the active political participation of individuals in political decisions affecting them, thus allowing their voices to be heard when it comes to their rights and their own lives. This is achieved through effective democratic processes and the full realisation of political and civil rights [20], thus ensuring that all States function within their legal boundaries when dealing with individuals being subjected to their behaviour [28].

In this regard, Pacilli et al. [32], however, caution that too strong identifications with political groups may lead to the dehumanisation of others not belonging to such groups. It is in this regard that emphasis must be placed on democracy as entailing more than just a political institution but rather signifying a representational and moral concept. Of its own accord, democracy embodies a value system which surpasses many aspects of social life, starting with individuals who strongly identify with democracy, filled with passion to build true democracies around the world [28]. The value of robust, safe and unwavering democracies for the realisation and protection of human rights to bring about human security

cannot be overstressed [34]. The efficiency of democracies must, subsequently, be measured by the extent to which all of its members, including governments, are dedicated to ensure that human rights and laws are throughout equally respected and upheld [20]. Such dedication can be measured by dissecting the establishment and maintenance of positive human life experiences relating to political stability, economic prosperity, workable democracies, and peaceful co-existence in societies amidst the existence of potentially opposing divisions [35]. In this regard, Heard [2] emphasises that the rights of man must be held sacred, however great a sacrifice governments must make.

## **2.4 Human rights in its historical dimension**

The historical fight for human rights started with philosophical and/or theological ideas and concepts underscored by Hobbes, Locke, and Kant regarding the need to respect the inherent worth of humans which gradually spilled over to the political sphere of national governments and, eventually, to the international domain [14]. In acknowledging the prominence of the values embedded in human rights, Gearty [36] even opines that their recognition across political and ideological borders symbolised the end of all ideologies and, thus, the end of history. It brought an end to historical periods during which human beings were not treated with dignity nor equally protected to the extent to which they deserved and, consequently, started a new moral era [23] which can be inherited by future generations [16]. In order to delineate the efficiency of such an inheritance, the human rights most prominent for current and future generations need identification.

## **3. Which human rights are pertinent to meaningful human existence?**

After analysing various definitions proposed by researchers, Doğanay and Öztürk [37] follow a philosophical natural rights approach as underscored by numerous philosophers [38–42] by defining human rights as entailing, *par excellence*, universal concepts of fairness and equality. In doing so, focus is placed on the generalisation and global application of human rights as well as its origin being the very existence of humans (life, self-esteem, and the intrinsic value of dignity [6]) in relation to equality (all human beings are born equal and should be treated equally—a concept initially based on the spiritual assumption that all humans possess a soul and are part of Christ’s redemption plan [5]), which they consider to be the main feature of all human rights. Based on the intrinsic worth shared by all human beings, Metz [21] contends that humans are entitled to significant moral claims to receive equal treatment. This entails treating all humans in a special manner by virtue of their capacity to cooperative rather than by an endeavouring to balance conflicting human needs and interests within society.

To Staerkle et al. [28], the rights to individual freedom and political participation are prominent as they are inherent to human nature. Ercan et al. [16], in turn, emphasise the essence of human dignity, tolerance, peace, respecting others’ rights, brotherhood, solidarity, and friendship. From a philosophical point of view, the rights to human freedom/liberty and property also merits prominence although it has all along been recognised that humans naturally possess liberty [3]. Guaranteeing human freedoms has, nevertheless, become essential as humans, according to Rousseau [43], longed for their natural freedom when entering into a social contract with others, thus accepting legal systems governing their behaviour.

In the South African context, the newly appointed democratic government of 1994 adopted a final Constitution in 1996, in which mostly individual fundamental rights



are guaranteed. This Constitution is regarded as a transformational document aiming at replacing the previous apartheid regime due to colonisation, riddled with racism and the unequal treatment of humans based on their individual characteristics. It is a value-driven Constitution guaranteeing fundamental rights to every human being and pertinently providing for constitutional values including transparency, democracy, equality, human dignity, and the achievement of each human's potential.

Given their prominence in the new South Africa, the rights to equality (section 9), human dignity (section 10), and life (section 11) are firstly assured. Due to its history of past inequalities towards humans and their current diverse population, the right to equality deserved special attention. It entails respecting the equal worth (mutual recognition) of all humans although they differ regarding their nature, life conditions, social circumstances, as well as personal biographies and decisions [30].

Although the Constitution does not provide for a hierarchical structure of human rights, the standing of human dignity and the right to life was elevated above all other fundamental rights in the landmark case of *S v Makwanyane*, 1995 (3) SA 391 (CC) (para. 144). The Constitutional Court made a specific mention of the political and social factors dominant in South Africa which caused a climate of aggression, revenge, and vengeance disregarding the worth and life opportunities of its inhabitants. In view hereof, it is safe to say that lived experiences in a particular society influences the manner in which human rights may be prioritised, interpreted, and perceived [26]. For South African's specifically, the rights to liberty, education, and personal gain may, for example, be more important than building a better life for future generations. As a direct result, they may be more selective of which human rights they support and which activities they demand from government to make their lives worthwhile [3].

The legal recognition of human rights on international level by the United Nation's Declaration on Human Rights placing emphasis on the fact that all human beings are born free and equal in dignity and rights as well as that humans are naturally gifted with reason and conscience that allows them to interact with others in a spirit of comradeship is also not without appraisal. Bentham [9], for example, critiques the notion of equality as an anarchical myth by noting that humans are clearly born unequal pertaining to status, property, genetic talents, and wealth, and access to the social determinants of good health and in numerous other aspects. As a direct result, he disregards the existence of natural rights and underscores the importance of legally recognised human rights. He points out that the moral component of human rights is in direct conflict with their presumed legal status. Bentham also states that humans are not born free as babies are absolutely dependent on others for their survival. Along the same lines, he argues that human rights refer to rights which must be legally guaranteed to humans and not merely justified by legal systems. As such, he argues that the human rights discourse has moved outside the scope of moral and legal philosophers and into the hands of politicians deciding which human rights will deserve prioritisation.

The right to equality is, furthermore, criticised by Donnelly [44] on the basis that humans by nature function in hierarchical relations with other humans within a society, thus automatically leaving them prone to inequalities and competition for better life opportunities. Based on the prominence of human rights and the critique against them, the justification of such rights merits discussion.

#### **4. Can human rights be justified?**

The potential of protecting human rights for enabling all humans to live quality lives lies in the fact that human rights guide humans to cope with the burdens of



a dynamic society whilst influencing their own physical, mental, and emotional well-being, their economic status, knowledge wealth, access to basic services, and social security which, in turn, positively impacts on their general behaviour towards others [45].

Intrinsically, every human being must be regarded as an end in itself and as the subject of their own lives [30]. This view is embedded in the widely accepted ethical notion that human autonomy is grounded upon universal dignity representing a philosophical belief which suggests an objective moral principle, on the one side, and the recognition of equal human rights, on the other side [46]. All humans consequently have equal dignity; it is a heritage of humanity [47].

The attachment of responsibilities to human rights is necessary to allow for a moral, ethical, and balanced justification thereof, especially due to the individualistic nature of human rights. It serves as a reminder to all that individual freedom necessitates restriction and that human beings are not mere right-holders but also duty-bearers in order to harmonically co-exist with others. Each human being is, thus, not only a beneficiary of human rights but also confined by duties towards family and society members, the State, as well as the international community [48]. In this regard, the United Nation's Declaration of Human Rights ([49], article 1) recognises that all human beings are gifted with reason and conscience and obliged to adopt a spirit of brotherhood towards one another during their interactions. Individuals or specific groups of humans can, thus, not be excluded from access to human rights [14]. They play a key normative role in human existence within a broader society [50], requiring a dynamic understanding of diverse human needs that must be met. In recognising that diverse human needs may conflict with each other, the normative effect of human rights necessitates clarification.

## **5. What are the normative implications of human rights claims?**

Heard [2] argues that the leading rhetorical advantage of human rights is that they should triumph over all other legitimate claims within a society due to their basic and fundamental value for human existence. The recognition of a human rights culture in South Africa, for example, abruptly brought an end to the adverse effects resulting from the historical apartheid era which made it impossible for instilling democratic principles that could guarantee an equitable and thriving society [45, 51].

Empowering humans with legal entitlements to have their human rights respected, fulfilled, and promoted, however, reflects only one side of a coin. Since communities consist of a combination of affect-laden interactions amongst their diverse members, cognisance must be taken of the degree to which such members and government are willing to commit themselves to a uniform set of norms, values, and cultures pertaining to a shared history and common identity [52]. In this sense, commitment entails a deeply rooted dedication and not merely a shallow confirmation of the value of human rights [53]. Humans need to be tolerant towards differences, requiring of them to respect, accept, and appraise human differences positively [54] if they want to live together peacefully [48]. In this regard, Staerkle et al. [28] caution that democracy, allowing for a government by the people for the people, must not be viewed as a natural or automatic consequence of the recognition of the worth of every community member but rather as a result of a combination of historical, cultural, social, and economic factors present in communities gradually leading to the acceptance of some form of democracy. Heard [2], alongside, opines that there may remain a need to safeguard humans from utilitarian decision-making even amongst governments that are sincerely committed to moral

obligations. This is mainly due to the potential of conduct being regarded as being in the best interests of the greater good of the entire society to lead to sacrifice or exploitation of minority interests. Since a harmonious balance needs to be obtained between diverse human interests, insight into the nature and behaviour of humans being the ultimate bearers of human rights warrants further understanding.

## **6. Understanding human nature and behaviour within the moral and legal framework of human rights**

The disputed concept of human nature can be explained as incorporating a grouping of genetic and cultural factors decisive to human ethics, feelings, and behaviour [17]. It is due to the generic or biological factors inherent in humans that man has the capacity to develop ethics, namely, to anticipate consequences of behaviour, adopt societal standards, feel empathy, and make moral choices. Cultural factors, on the other side, emanate from society itself in which the actual morals, ethics, and norms applicable in a specific society naturally follow from the development of culture within such a society [17].

Although it is obvious that tension may arise between the genetic (individual egoism) and cultural (group identity) elements that guide human nature, thus influencing human behaviour, scientists have rarely linked these factors to human rights [17]. It is, however, argued that human rights cannot be studied in isolation—they unavoidably embrace unique human developmental opportunities, interpersonal and domestic elements, as well as broader institutional and societal issues prevalent in different social contexts [55]. Societal concerns, in turn, affect human attitudes, behaviour, and even the extent to which men are willing to adopt a social identity and are prepared to recognise and support human rights [48].

Seeing that human behaviour is subjective to an individual's unique personal philosophy, political opinions, and goals, humans tend to choose the rights they are willing to support [26]. The adherence to human rights and, thus, the success of an idealistic human rights culture are depended upon a better insight into the genuine attitudes of and behaviour towards human rights in general [26]. It must, therefore, be acknowledged that individual, self-contained values such as social justice, equality, loyalty, and care [4, 55] as well as the social conditions in which humans live **predict** their behaviour [25]. This, consecutively, poses challenges for the realisation of universal human rights aiming at regulating human behaviour across national borders, underscoring a more globalised application [24]. In this regard, Moghaddam and Vuksanovic [26], however, opine that the attitudes and behaviour of humans towards the human rights of others should be consistent and should not change as a function of who they are and where they live.

Although humans have a natural tendency to follow morally grounded rules of behaviour even in the absence of formal legal principles, the adoption of a legal system assists in giving recognition to rights which can be claimed when humans behave unjustly and infringing on the rights of others. It can, therefore, be argued that there can be no society without rights regulating human behaviour whether being part of government or on a personal level [3, 15, 19, 56]. It is, however, important to identify and understand the main features guiding humans to commit and subject their own behaviour to legally entrenched human rights even when it is not totally favourable to themselves.

The Declaration of Human Rights [49], alongside, recognised that every individual and each societal institution should strife at educating themselves and others in respect of human rights and freedoms. Since then, numerous authors have stressed the importance of human rights education and education in general for influencing

human behaviour. Kramers-Olen [55], for example, in researching the violation of the human rights of people with intellectual disabilities, found that the meaningful realisation of human rights inevitably intersects with the educational level of humans. It was concluded that such humans are often the victims of human rights abuses purely due to their lower intellectual functioning. As a direct result, the same author underlines the importance of obtaining loyalty amongst all societal members and institutions towards respecting human rights. In researching the violation of humans living with albinism, Mswela [29], similarly, found that such humans are marginalised and even killed due to misconceptions held by community members regarding them as being a curse on community or considering their body parts as being beneficial used as a muti.

It is in view hereof this respect, that the importance of human rights **education** in increasing knowledge, skills, understanding, attitude and mindfulness; all essential for preserving, endorsing and promoting fundamental rights and freedoms [37] and obtaining peace, cooperation, tolerance as well as democracy; is stressed [16]. The positive effect of education on changing humans' attitudes regarding their behaviour towards protecting human rights in general and even for future generations is highlighted [37]. Mkabela [31], conversely, cautions that human rights education should not negate traditional and indigenous values but rather be receptive to unique community perspectives in order to close the gap between the conceptualisation and practice of human rights by members belonging to different cultural groups. Mkabela's research results displayed the negative consequences of education taking a too globalised approach. It led parents to start relinquishing their roles of inculcating values to their children and to blame the education system for presenting human rights education in schools which encourages unacceptable behaviour in their communities. Human rights education should, according to Cohrs et al. [33], include more general anti-authoritarian and democratic or egalitarian values and attitudes for them to become more dominant and give rise to more positive orientations towards human rights.

Ercan et al. [16] advocate the starting of appropriate human rights education at primary schools to positively affect learner behaviour through knowledge and socialisation. They highlight the fact that learners at this developmental level are more open to adopting lifelong tolerance, awareness, and the ability to compromise, obtain overall positive attitudes towards human rights, and assume self-reported behaviour, thus being less inclined to violate such rights. Ongoing civic education or education for democracy as part of school reform is, nevertheless, encouraged.

From an interdisciplinary point of view, Kirchsclaeger [14] opines that both the law and education can establish an ethical foundation upon which legal systems can be changed in order to make provision for morally laden human rights. In this regard, he points out that the realisation of human rights cannot be automatically achieved; they necessitate a suitable ethos that ensures their enforcement. They need to be truly lived by, by both humans and governments; they are not a gift but a human task. Humans must be educated on how to behave in ways that compliment human rights, they need to be prepared to take action on behalf of fellow human beings, and they must be taught to have sympathy for others and remain committed to obtaining social justice and peace [14]. The eminence of human rights education is underscored by the fact that gross human rights abuses continue to take place globally.

## **7. Persistent human rights violations**

Although political leaders globally vowed in 2000 to do all within their power to endorse and respect internationally recognised human rights, more than 800



million people around the globe still live under very poor and inhumane conditions [30]. Albeit being different in degree, all countries experience human rights problems hampering the respect such rights are entitled to in practice [57]. All modern societies consist of groups enjoying more power, social status, and wealth than subordinated groups, replicated by forms of discrimination such as sexism and racism, being justified as so-called hierarchy-augmenting legitimising myths [33].

In Islamic countries, for instance, women are still not viewed as equals, religious rebels are victimised, and political participation is only partially recognised. Political dominance is also central in countries such as Russia, Turkey, Hungary, and Venezuela. Xenophobia is flourishing in Europe and South Africa, whilst slavery still continues in some countries [23]. There are still more than 150 countries (out of 193 belonging to the United Nations) engaging in human anguish, and the amount of authoritarian governments is increasing. As such, reality shows that human rights law has failed to achieve its goals.

The ability of human rights to emancipate and dominate, protect, and control can, however, not be ignored. They have become a means for regulating human life and, thus, became tools of public power (the authority to withhold, revoke, or violate protection, provision, or participatory rights [48]). They are used as justification for a new configuration of political, economic, and military power [36]. Human rights, as colonialism in the guise of moralism, are often employed as a political alibi by governments tolerating and ignoring persistent inequities and unashamed injustices [58]. The rise of mass democracies around the globe during the twentieth century has given way to the protection of some humans whilst neglecting the needs of others comprising the poor and those struggling to live adequately and to find employment, thus leaving them to squander in illegal settlements, making illegal use of water and electricity, and even to commit immoral behaviour such as stealing, cheating, intimidating, abusing, and even murder just to survive [21]. Forced to behave outside the parameters of the law, such humans tend to want to be excluded from rights if rights are the law in order to escape, at least, a small part of the totalising system of governmentality that is served by the common purchase on human rights. As such, human rights have become a myth for those who suffer constant violations by, ironically, those who underscore the victory of human rights [36].

The constitutional rights of so-called loyal citizens are protected, whilst others are denied access to such safeguards [59]. Human rights are selectively misused to justify violations at the cost of many humans. They are camouflaged by states, identified as the main violators of human rights, as a form of justice-seeking [60]. Gearty [36] blames the incorporation of human rights into law as it imprisons and restricts human rights to the sphere of the law. To avoid this, Wolfgang [30] advocates the following of, as opposed to a totalitarian approach, a pluralistic ethical approach based on the principle that everyone matters equally and that all have access to rights by virtue of their humanity, not only as citizens but also as non-citizens, in order to avoid the exclusion of certain humans.

The practical realisation of human rights, nevertheless, necessitates some form of legal protection. Crimes against humanity, in essence committed by humans themselves, being it through governments or on an individual level, can only be corrected if such crimes are indeed legally punished [27]. Whilst some States are not able to protect human rights, others simply do not want to [57]. It is often contended that giving effect to human rights, especially socio-economic rights, is just too costly. Ferreira [61] criticises such an argument by pointing out that human rights are more complex than such a contentment allows for, as human rights cannot merely be interpreted as entitlements to some good. The inability of States to provide for the necessary infrastructure within which the human rights of all regarding



housing, medical care, education, employment, and food can be realised as a global concern as it denies humans their right to have their basic human needs to be met that will enable them to live dignified lives [61].

South Africa is, with regard to governments, merely not wanting to effectively realise human rights, a good example. Whilst this country's unemployment and poverty rates are increasing, government is misusing State funds for their own personal gain—corruption amongst State members is at the order of the day. Pensioners are, for example, left without resources as government used their funds to build e-tolls on its public roads. Increasing conflict amongst society members over employment opportunities and wages, the showing of intolerance towards diversity, the discrimination between inhabitants by way of name-calling through the social media and even from political platforms, the political upheavals from government scandals, as well as constant violent protests by the black majority who have yet to fully benefit from the transition from apartheid to democracy, all contribute to the unwillingness of the South African government towards creating a society reflecting a human rights culture. To this, the corruption-plagued governance of old President Zuma, supporting the rights of oppressors over their victims, can be added [62].

Regarding the political dimension of human rights, Gilbert [63] remarks that politicians are only concerned about being re-elected and will do everything and promise anything as long as they achieve their goal, without any true commitment to respecting the human rights of those electing them. Politicians tend to adopt a culture of control characterised by dismissing societal welfare pertaining to alleviate poverty, bring about equality, and create better life and employment opportunities as well as punishing crime by using expressive, emotive, and moralistic rhetoric to demonise those who seek State assistance as they are progressively marginalised from the economy [64].

In other parts of the world, the rise of secret terrorist activities are also used to secretly, without any legal justification, intrude the lives of humans of which the events of 11 September 2001 in the USA is but one example [36]. States are, likewise, using the protection of national security (the common good [21]) as a main means of restricting the individual rights belonging to humans. They fail to balance conflicting rights and competing interests effectively.

In South Africa, the acceptance of a human rights-driven Constitution and that of democracy instilled new hope for a better life for all South Africans. However, government soon turned to uplift themselves at the cost of those in a dire need of equal life opportunities. As a result, faith was lost in this country's ability to meet the needs of its inhabitants which led South Africans displaying new behaviour to obtain the attention of the world. They have turned to, amongst other, drug abuse, murders, aggressive strikes, land grabbing, and brutal aggression towards foreigners, gangsterism, hate speech, and human trafficking.

The South African Constitutional Court, despite repeated attempts to convince it to do so, has even on numerous occasions [*Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) paras 32-3; *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC) paras 34-9; *Nokotyana v Ekurhuleni Metropolitan Municipality* 2010 (4) BCLR 312 (CC); and in *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC) fn. 46] refused to adopt a minimum core approach to the realisation of individual's socio-economic rights in order to oblige the government to give effect to such rights. Thus, even the judiciary indicated its lack of commitment towards the realisation of human rights by opting for rather maintaining good relationships with the executive authority by showing empathy to the latter's limited available resources. Rudman [65] disapproves of such an approach by stating that Constitutional Courts, par excellence, established to protect constitutional rights,

should be much more flexible in their approach as to enable them to be stricter when it comes to the violations of human rights. The unwillingness of courts is criticised by Barak [34] to the extent that the judiciary's main duty is to guard the effective implementation of human rights and, thus, to stand up to a government guilty of abusing its powers. Courts should not negate their responsibility to ensure that governments do not exceed their powers to the detriment of humans [66]. If courts remain unwilling to assist humans in this regard, humans will come to distrust judicial systems to adjudicate human rights infringements effectively [36].

It is evident that the Constitution presupposed an efficient government with the capacity and commitment to meet the hopes of its inhabitants in their desire for a participatory and efficient democracy, the realisation of their human rights, peace and security, equal developmental opportunities, social justice, and integration [24]. In this quest, it must be recognised that humans themselves do not just live in a democracy; a constitutional State does not embody a complete structure but is rather imperfect, revisable, subtle, and delicate in its aim at recognising human rights afresh under dynamic circumstances. As such, the responsibility lies with all living in contemporary South Africa to endorse human rights and inspire government to do the same [54]. In a democracy humans are obliged to actively participate and take responsibility for the realisation of human rights and cannot, as the case in authoritarian regimes, exclusively blame government for human rights violations [28].

## 8. Conclusion

In studying human rights through a philosophical lens, this chapter succeeded in recognising the moral or ethical dimensions lying at the foundation of human rights. Although it was acknowledged that humans by nature tend to behave ethically, it became evident that persistent human rights violation through human behaviour necessitates the inclusion of human rights within a legal framework. This allows for obliging not only governments but also private individuals to adhere to the responsibilities indispensably linked to human rights. It also empowers those whose human rights are violated to legitimately claim compliance to normative legal imperatives.

The interplay between the egoistic nature of humans and the need for humans to harmoniously co-exist in society amongst other humans depicted the effect of society-specific conditions on human behaviour. It came to the fore that humans, with their own individual set of morals and beliefs, need to be well educated in order to adopt and adapt to mutually acceptable behaviour that would be to the benefit of all living in such a society.

Reference to the persistent occurrence of human rights violations globally underscored the gap, despite the widely acceptance of human rights in their ethical, legal, political, and historical dimensions that remains to exist between both moral and legal ideals and the extent to which effect is given to human rights in reality. This keeps the gate open for furthering the debate pertaining to how human behaviour needs to be adopted to realise human rights, at least those pertinent to meaningful human existence, to their fullest potential.

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## References

- [1] Keith LC. Human rights instruments. In: Cane P, Kritzer HB, editors. *The Oxford Handbook of Empirical Legal Research*. Vol. 2010. United States: Oxford University Press; 2010. pp. 353-375
- [2] Heard A. Human Rights: Chimeras in Sheep's Clothing? [Internet] 1997. Available from: <http://www.sfu.ca/~aheard/intro.html> [Accessed: 2018-12-18]
- [3] Gusman J. The concept of human Rights: Political and moral approaches [thesis]. Political Science: Radboud University; 2015
- [4] Twose G, Cohrs JC. Psychology and human rights: Introduction to the special issue. *Peace and Conflict: Journal of Peace Psychology*. 2015;21(1):3-9. DOI: 10.1037/pac000008
- [5] Douzinas C. *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. United Kingdom: Routledge; 2007. 313 p
- [6] Ajey MO. Human rights in a moderate communitarian political framework. *South African Journal of Philosophy*. 2015;34(4):491-503. DOI: 10.1080/02580136.2015.1119920
- [7] Nussbaum M. *Creating Capabilities: The Human Development Approach*. Cambridge: Harvard University Press; 2011
- [8] Australian Human Rights Commission. All human rights explained, fact sheet 3 [Internet]. 2009. Available from: [www.humanrights.gov.au/education/hr\\_explained/](http://www.humanrights.gov.au/education/hr_explained/) [Accessed: 2018-12-17]
- [9] Bentham J. Anarchical fallacies. In: Jeremy Waldron J, editor. *Nonsense Upon Stilts: Bentham, Burke, and Marx on the Rights of Man*. London: Methuen; 1987
- [10] Geuss R. *History and Illusion in Politics*. Cambridge: Cambridge University Press; 2001. 144 p
- [11] Darby D. Rights externalism. *Philosophy and Phenomenological Affairs*. 2004;68:620-634
- [12] Martin S. Rights as enforceable claims. *Proceedings of the Aristotelian Society*. 2003;103:133-147
- [13] Cruft R, Liao SM, Renzo M. The philosophical foundations of human rights: An overview. In: Cruft R, Liao SM, Renzo M, editors. *Philosophical Foundations of Human Rights*. *Philosophical Foundations of Law*. Oxford: Oxford University Press; 2015. pp. 1-41
- [14] Kirchsclaeger PG. Adaptation—A model for bringing human rights and religions together. *Acta Academica*. 2015;47(2):163-191
- [15] Muis J. Human rights and divine justice. *HTS Theological Studies*. 2014;70(1):1-8. DOI: 10.4102/hts.v70i1.2740
- [16] Ercan R, Yaman T, Demir SB. Human rights attitude scale: A validity and reliability study. *Journal of Education and Training Studies*. 2015;3(6):220-231. DOI: 10.11114/jets.v3i6.1031
- [17] Marks P. The past and future of the separation of human rights into categories. *Maryland Journal of International Law*. 2009;24:208-241
- [18] Gerard RW. The rights of man: A biological approach. In: Maritain J, editor. *Human Rights: Comments and Interpretations*. London/New York: Allan Wingate—Originally Issued as UNESCO Doc. PHS/3 (Rev.); 1949. pp. 205-206
- [19] Wilson EO. *The Social Conquest of Earth*. WW Norton & Co: New York/London; 2013. 330 p



- [20] Bribena K. What if there was no human rights in Africa: The musing of a human rights scholar. *Gender and Behaviour*. 2017;**15**(4):10090-10100
- [21] Metz T. African values and human rights as two sides of the same coin: A reply to Oyowe. *African Human Rights Law Journal*. 2014;**14**:306-321
- [22] Changeux J. *The Physiology of Truth*. Neuroscience and Human Knowledge, Cambridge, MA: Harvard University Press; 2002. 236 p
- [23] Posner E. The case against human rights. *The Guardian*. 2017. Available from: [/ael.eui.eu/wp-content/uploads/sites/28/2017/05/De-Burca-03-Posner.pdf](http://ael.eui.eu/wp-content/uploads/sites/28/2017/05/De-Burca-03-Posner.pdf) [Accessed: 2018-05-13]
- [24] Habermas J. The constitutionalisation of international law and the legitimisation problems of a constitution for world society. *Constellations*. 2008;**15**(4):444-455. DOI: 10.1111/j.1467-8675.2008.00510.x
- [25] Woods AK. A behavioural approach to human rights. *Harvard International Law Journal*. 2010;**51**(1):51-111
- [26] Moghaddam FM, Vuksanovic V. Attitudes and behaviour toward human rights across different context: The role of right-wing authoritarianism, political ideology and religiosity. *International Journal of Psychology*. 1990;**25**:455-474. DOI: 10.1080/0020759 9008247877
- [27] Asomah JY. Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society. *African Human Rights Law Journal*. 2015;**15**:129-149. DOI: 10.17159/1996-2096/2015/v15n1a6
- [28] Staerkle C, Clemence A, Doise W. Representation of human rights across different national contexts: The role of democratic and non-democratic populations and governments. *European Journal of Social Psychology*. 1998;**28**:207-226
- [29] Mswela M. Violent attacks against persons with albinism in South Africa: A human rights perspective. *African Human Rights Law Journal*. 2027;**17**: 114-133. DOI: 10.17159/1996-2096/2017/v17n1a6
- [30] Wolfgang H. Human rights and globalisation—Are human rights a “Western” concept or a universalistic principle? *NGTT*. 2014;**55**(1):117-137. DOI: 10.5952/55-1-2-518
- [31] Mkabela QN. Ubuntu as an axiological framework for human rights education. *Indilinga, African Journal of Indigenous Knowledge Systems*. 2014;**13**(2):283-291. DOI: 10520/EJC166448
- [32] Pacilli MG, Roccato M, Pagliaro S, Russo S. From political opponents to enemies? The role of perceived moral distance in the animalistic dehumanization of the political outgroup. *Group Processes and Intergroup Relations*. 2016;**19**(3):360-373. DOI: 10.1177/1368430215590490
- [33] Cohrs JC, Maes J, Moschner B, Kielmann S. Determinants of human rights attitudes and behaviour: A comparison and integration of psychological perspectives. *Political Psychology*. 2007;**28**(4):441-469. DOI: 10.1111/j.1467-9221.2007.00581x
- [34] Barak A. Foreword—A judge on judging: The role of a Supreme Court in a democracy. *Harvard Law Review*. 2002;**16**:19-162
- [35] Law DS. Constitutions. In: Cane P, Kritzer HB, editors. *The Oxford Handbook of Empirical Legal Research*. United State: Oxford University Press; 2010. pp. 376-398

- [36] Gearty C. Human rights: The necessary quest for foundations. In: Douzinas C, Gearty C, editors. *The Meanings of Rights: The Philosophy and Social Theory of Human Rights*. Cambridge: Cambridge University Press; 2014. pp. 21-38
- [37] Doğanay A, Öztürk A. Developing attitudes towards human rights through socio-scientific issues in science courses: An action research. *Multidisciplinary Journal of Educational Research*. 2017;7(3):253-286. DOI: 10.17583/remie.2017.2873
- [38] Grotius H. In: Barbeyrac J. *The Rights of War and Peace*. Vol. 3. Indianapolis: Liberty Fund; 2005. Available from: <https://oll.libertyfund.org/titles/1877>. 8/22/2019
- [39] Von Pufendorf S. *Of the Law of Nature and Notions: Eight Books*. 4th ed. New Jersey: Lawbook Exchange Ltd; 2005. pp. 1018. ISBN: 13:978-1584773948.
- [40] Locke J. *Two Treatises of Government: A Principal Component Analysis*. Available from: [https://www.earlymoderntexts.com/assets/pdfs/locke\\_1689a.pdf](https://www.earlymoderntexts.com/assets/pdfs/locke_1689a.pdf)
- [41] Kant I. *The Metaphysics of Morals*. Edited by Gregor MJ. 2013. ISBN: 9780511809644. DOI: 10.1017/CB09780511809644
- [42] Hobbes T. *Leviathan*; 1651. ISBN: 13:978-1730901539. pp. 293
- [43] Rousseau J. *Discourse on the Origin of Inequality*, Originally Published 1755, Quoted from the *Social Contract and Discourses*, Translated by Cole GDH, Editor. London: Orion Publishing; 1993. 53 p
- [44] Donnelly J. *International Human Rights in Theory and Practice*. 2nd ed. Ithaca/ London: Cornell University Press; 2003. 16 p
- [45] Oke AE, Aigbavboa CO, Cane TK. 2017. Expected Quality of Life of Smart City Citizens. Available from: [www.researchgate.net/...Oke/.../Expected-quality-of-life-of-smart-city-citizens](http://www.researchgate.net/...Oke/.../Expected-quality-of-life-of-smart-city-citizens) [Accessed: 2018-10-16]
- [46] Steinmann R. The core meaning of human dignity. *PER*. 2016;19:1-32. DOI: 10.17159/1727-3781/2016/v19i0a1244
- [47] Strydom H. The human rights side of the human genome. *TSAR*. 2003;1:37-55. ISSN 0257-7747
- [48] Ziemens J, Abb H. Strong identities and endorsement of human rights: Conflictive or complementary? *South African Journal of Higher Education*. 2017;31(6):151-166. DOI: 10.28535/31-6-1636
- [49] United Nation. Declaration on Human Rights 1948: GA Res 217A (III). Adopted by the United Nation's General Assembly on 10 December 1948
- [50] Joas H. *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte*. Berlin: Suhrkamp; 2011
- [51] Greyling TA. Composite Index of Quality of Life for the Gauteng City-region: A Principal Component Analysis Approach. Johannesburg, Gauteng: Gauteng City Region-Observatory; 2013. Handle.net/10539/17365
- [52] Etzioni A. Creating good communities and good societies. *Contemporary Sociology*. 2000;29(1):188-195. SSRN: [ssrn.com/abstract=1438224](http://ssrn.com/abstract=1438224)
- [53] Partington M. Empirical legal research and policy-making. In: Cane P, Kritzer HB, editors. *The Oxford Handbook of Empirical Legal Research*. United State: Oxford University Press; 2010. pp. 1002-1024
- [54] Belasheva IV, Petrova F. Psychological stability of a personality and capability

of tolerant interaction as diverse manifestations of tolerance. *International Journal of Environmental and Science Education*. 2016;**11**(10):3367-3384

[55] Kramers-Olen A. Sexuality, intellectual disability, and human rights legislation. *South African Journal of Psychology*. 2016;**46**(4):504-516. DOI: 10.1177/00812463 16678154

[56] Griffin J. Discrepancies between the best philosophical account of human rights and the international Law of human rights. *Proceedings of the Aristotelian Society*. 2001;**101**:1-28

[57] Sarkin J. Balancing national security and human rights: International and domestic standards applying to terrorism and freedom of speech. *African Human Rights Law Journal*. 2016;**16**(1):265-282. DOI: 10.1080/13876980500513335?scr=recsys

[58] Hopgood S. *The End Times of Human Rights*. Ithaca, New York: Cornell University Press; 2015. 272 p

[59] Sheka KR, Pederson J. Reconceptualising human rights attitudes: Understanding outcomes and determinants. In: *Proceedings of the Association, Political Economy of the World-System section of the American Sociological. Power and Justice in the Contemporary World-Economy*; New York. 2013

[60] Keet A. Refractions: Social theory, human rights and philosophy. *Acta Academica*. 2014;**46**(4):132-158. DOI: Handle.net/10520/EJC165375

[61] Ferreira N. Feasibility constraints and human rights: Does 'ought' imply 'can'? *THRHR*. 2012;**28**:483-505. DOI: 10.1080/199962126,2012,11865057

[62] Africa Country Benchmark Report. 2017;(1):236-245. Available from: <http://www.inonafrica.com/2017/11/10/>

africa-country-benchmark-report-acbr-2017 [Accessed: 2018-07-18]

[63] Gilbert P. Human rights, yeah right ... Without Prejudices. 2014;**14**(10):82. DOI: Handle.net/10520/EJC164046

[64] Garland D. *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press; 2001. 324 p

[65] Rudman A. The protection against discrimination based on sexual orientation under the African human rights system. *African Human Rights Law Journal*. 2015;**15**:1-27. DOI: 10.17159/1996-2096/2015/v15n1a1

[66] Dbe A. Balancing human rights and national security. *South African Law Journal*. 2007;**124**(1):57-75. DOI: 10.1080/13876980500513335